

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF AMERICAN POSTAL
WORKERS UNION, AFL-CIO

Docket No. C2012-2

AMERICAN POSTAL WORKERS UNION, AFL-CIO,
MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO
USPS MOTION TO DISMISS COMPLAINT

(July 6, 2012)

The American Postal Workers Union, AFL-CIO (APWU) hereby moves the Commission to enlarge the time within which it may file its Reply to the USPS Motion to Dismiss the Complaint in this case to and including August 8, 2012. The APWU Complaint was filed on June 12, 2012, under the provisions of 39 U.S.C. § 3662 which provides that the Commission must take action to begin proceedings on a complaint or dismiss the complaint within 90 days after it is filed. In this case, the Commission must take action to begin proceedings by September 10, 2012.

This case is before the Commission on the Complaint of the APWU, filed under the provisions of Section 3662 and alleging that the Postal Service has violated Sections 3661 and 3691 of the Postal Reorganization Act, as amended by the Postal Accountability and Enhancement Act of 2006. 39 U.S.C. §§ 3661, 3662, 3691. The USPS Motion to Dismiss was filed on July 2, 2012. Under the Commission's Rules, APWU's Reply to the Motion to Dismiss is due to be filed July 9, 2012. If this motion is granted, the APWU's Reply will be due to be filed on August 8, 2012, a full month before the Commission is statutorily required to begin proceedings on the Complaint or to dismiss it.

The Motion to Dismiss Raises Important Issues That Require Full Briefing

The USPS Motion to Dismiss the Complaint raises important questions about the meaning and application of Sections 3661 and 3691 of the Act. For example, the Motion (at 11) acknowledges that “Congress did not intend the Commission to have the power to delay implementation of a service standard change so long as the Postal Service submitted the change to the Commission a ‘reasonable time’ ... before its planned implementation date.” (Footnote omitted.) Ellipted from the phrase quoted just above is the parenthetical “(i.e. not less than 90 days)”. The USPS argues that the Commission’s rule requiring that Section 3661 requests be submitted “not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved” (Rule 3001.72), means that such requests never need to be filed more than 90 days before the planned change is to take effect. In the context of Docket No. N2012-1, 90 days is not a reasonable period in which to expect the Commission and intervenors to develop a record upon which advice and recommendations might be provided to the Postal Service. The meaning of the law and Commission rule deserve a fuller reply than would be possible in the seven days provided for a response to the Postal Service Motion to Dismiss.

The USPS Motion (at 7-11) undertakes a recitation of the USPS reading of various statutory provisions it deems material to the question of how Section 3661 should be interpreted and applied. Some of those provisions, including Section 3661, were a part of the Postal Reorganization Act from its initial passage. At least one was added later (39 U.S.C. § 404(d); see Motion at 10). But the Postal Service, which bears the burden of persuasion on its Motion, fails to cite a single passage of legislative history to confirm how the statute was intended by Congress to fit together. The Postal Service’s reading of the Act would allow it to make nationwide changes and, as in Docket No. N2012-1, substantial changes to service without consideration of the advice and recommendations in a Commission Advisory Opinion issued under Section 3661. This has consequences for the Postal Service and its customers and devalues the Opinion. We agree with the principle cited by the Postal Service that no part of a

statute should be interpreted in a way that makes it meaningless; but come out with a different conclusion. This deserves a full development.

The Issues Raised by the Motion to Dismiss Cannot Be Addressed by APWU in the Time Permitted by the Rules

The APWU has limited resources. It presently has the following obligations to meet in important matters pending before the Commission:

July 10, 2012:	N2012-1: Initial Brief Due
July 11, 2012:	N2012-2: Hearing on USPS Direct Case N2012-2: Notice of Intent to File Rebuttal due
July 18, 2012:	N2012-2: Rebuttal Due RM2012-4: Reply Comments Due
July 20, 2012:	N2012-1: Reply Comments Due N2012-2: Initial Comments Due if no rebuttal
July 27, 2012:	N2012-2: Reply Comments Due if no rebuttal

Most notably, the APWU's initial brief in Docket No. N2012-1 is due one day after its Reply to the Postal Service Motion to Dismiss the Complaint in this case is presently due. There will be no respite from filing obligations in Commission matters until after reply comments are filed on July 27, 2012. The APWU's request is that it be provided until August 8, 2012, to prepare and file its Opposition to the USPS Motion to Dismiss. In light of the serious and far-reaching arguments made by the USPS in its Motion, we respectfully submit that this requested extension of time is reasonable and necessary.

Respectfully submitted,

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